

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
GREAT FALLS DIVISION

**FILED**

DEC 07 2016

Clerk, U.S. District Court  
District Of Montana  
Helena

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAVIER DOLORES GONZALEZ-  
DIAZ, aka Phillip Baca, Jr.,

Defendant.

Cause No. CR 09-77-GF-SEH

ORDER DENYING MOTION TO  
REDUCE SENTENCE

On November 23, 2016, Defendant Gonzalez-Diaz moved the Court to reduce his sentence in light of a recent amendment to U.S.S.G. § 2L1.2, the guideline governing his advisory guideline calculation.

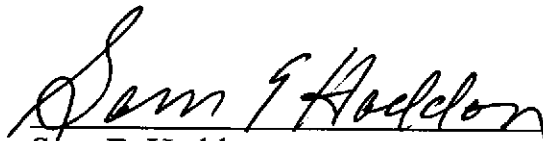
Gonzalez was sentenced in February 2010. His conviction and sentence became final on May 16, 2011. *See Gonzalez-Diaz v. United States*, No. 10-10019 (U.S. May 16, 2011); *Griffith v. Kentucky*, 479 U.S. 314, 321 n.6 (1987). Five and a half years later, the Sentencing Commission adopted Amendment 802, altering the manner of assessing aliens' criminal history under U.S.S.G. § 2L1.2.

18 U.S.C. § 3582(c)(2) authorizes a court to reduce a sentence based on a guideline amendment "if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission." The Commission's policy statement is located in U.S.S.G. § 1B1.10. Of the 804 guideline amendments

adopted to date, 29 of them apply retroactively. Amendment 802 is not among them. *See* U.S.S.G. § 1B1.10(a)(1), (d). Therefore, the Court is not authorized to reduce Gonzalez's sentence.

Accordingly, IT IS HEREBY ORDERED that Gonzalez's motion to reduce the sentence (Doc. 86) is DENIED.

DATED this 7<sup>th</sup> day of December, 2016.

  
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Sam E. Haddon  
United States District Judge